

### **REMARKS**

This amendment is responsive to the Final Office Action dated May 20, 2009. By this Amendment, Applicant has amended claims 1 and 42 and canceled claims 25-28 and 48. Claims 22, 23 and 29-41 were previously canceled. Claims 1-21, 24 and 42-47 are pending. Reconsideration of the application in light of the above amendments and the following remarks is respectfully requested.

### **Amendments to the Specification and Claims**

Applicant respectfully submits that the amendments to the specification and claims do not introduce new matter. Specifically, support for the amendments to the specification and to the claims may be found in FIGS. 1-5 and 6A-6C of the Applicant's specification.

MPEP 608 states:

All amendments or claims must find descriptive basis in the original disclosure, or they involve new matter. Applicant may rely for disclosure upon the specification with original claims and drawings, as filed. See also 37 CFR 1.121(f) and MPEP § 608.04.

In addition, MPEP 608.04 states:

In establishing a disclosure, applicant may rely not only on the specification and drawing as filed but also on the original claims if their content justifies it.

Applicant respectfully submits that the amendments to the specification and claims include material that is implicit, intrinsic or inherent in the application as filed. In particular, the amendments are fully supported by the disclosure in FIGS. 1-5 and 6A-6C of Applicant's specification.

With respect to amended claim 1, for example, FIGS. 3 and 5 show that the expansion means includes a screw expansion mechanism having a proximal end and a distal end, the proximal end including a first L-shaped flange having a first vertical plate that receives the screw expansion mechanism and a first horizontal plate that is substantially perpendicular to the first vertical plate and that engages the first flange engagement structure of the first transmitting means, the first flange engagement structure sized to receive the first horizontal plate, the distal end including a second L-shaped flange having a second vertical plate connected to the distal end of the screw expansion mechanism and a second horizontal plate that is substantially

perpendicular to the second vertical plate and that engages the second flange engagement structure of the second transmitting means, the second flange engagement structure sized to receive the second horizontal plate.

With respect to amended claim 42, for example, FIGS. 3 and 5 and FIGS. 6A-6C show that the expansion structure comprises a screw expansion mechanism, a proximal end having a first L-shaped flange having a first vertical plate that receives the screw expansion mechanism and a first horizontal plate that is substantially perpendicular to the first vertical plate and that engages a first slot of the first transmitting structure, the first slot sized to receive the first horizontal plate, and a distal end having a second L-shaped flange having a second vertical plate connected to a distal end of the screw expansion mechanism and a second horizontal plate that is substantially perpendicular to the second vertical plate and that engages a second slot of the second transmitting structure, the second slot sized to receive the second horizontal plate.

Thus, Applicant respectfully submits that the amendments to the specification and claims include disclosure that was contained in drawings of the application as originally filed, and that these amendments may therefore be added to the specification and claims without introducing new matter.

Entry and consideration of the amendments to the specification and to the claims is therefore respectfully requested.

#### **Objection to the Drawings**

The drawings were objected to "because the lines and details are unclear."

Attached hereto are replacement drawings sheets for FIGS. 1-5, 6A-6B and 7-10. Applicant respectfully submits that the drawings are sufficiently clear, and respectfully requests that the objection to the drawings be withdrawn.

#### **Claim Rejection Under 35 U.S.C. § 102 (Sellers)**

In the Final Office Action, claims 1-17, 19-21, 24-28 and 42-48 were rejected under 35 U.S.C. 102(e) as being anticipated by Sellers (US 6,423,069). Applicant respectfully traverses the rejection to the extent such rejection may be considered applicable to the amended claims. Sellers fails to disclose each and every feature of the claimed invention, as required by 35 U.S.C.

102(b), and provides no teaching that would have suggested the desirability of modification to include such features.

Claim 1 has been amended to more specifically describe the structure of the expansion means. Specifically, claim 1 has been amended to recite that the expansion means includes a screw expansion mechanism having a proximal end and a distal end, the proximal end including a first L-shaped flange having a first vertical plate that receives the screw expansion mechanism and a first horizontal plate that is substantially perpendicular to the first vertical plate and that engages the first flange engagement structure of the first transmitting means, the first flange engagement structure sized to receive the first horizontal plate, the distal end including a second L-shaped flange having a second vertical plate connected to the distal end of the screw expansion mechanism and a second horizontal plate that is substantially perpendicular to the second vertical plate and that engages the second flange engagement structure of the second transmitting means, the second flange engagement structure sized to receive the second horizontal plate.

Claim 42 has been amended to more specifically describe the expansion structure. Specifically, claim 42 has been amended to recited that the expansion structure comprises a screw expansion mechanism, a proximal end having a first L-shaped flange having a first vertical plate that receives the screw expansion mechanism and a first horizontal plate that is substantially perpendicular to the first vertical plate and that engages a first slot of the first transmitting structure, the first slot sized to receive the first horizontal plate, and a distal end having a second L-shaped flange having a second vertical plate connected to a distal end of the screw expansion mechanism and a second horizontal plate that is substantially perpendicular to the second vertical plate and that engages a second slot of the second transmitting structure, the second slot sized to receive the second horizontal plate.

Support for the amended claim language can be found in FIGS. 3, 5 and 6A-6C as described above.

Sellers describes an orthopedic device in which proximal and distal fasteners 18 and 20, respectively, each of which includes a connecting portion comprising a shoe 182, 220, respectively (see, e.g., Sellers, FIGS. 6A, 6B, 7A and 7B). Proximal shoe 182, however, is not L-shaped, nor does proximal shoe include a first vertical plate and a first horizontal plate that is substantially perpendicular to the first vertical plate and that engages the first flange engagement structure of the first transmitting means, as recited in claim 1. Similarly, distal shoe 220 is not L-

shaped, nor does distal shoe include a second vertical plate and a second horizontal plate that is substantially perpendicular to the second vertical plate and that engages the second flange engagement structure of the second transmitting means, as recited in claim 1.

Claims 2-21 and 24 are dependent upon claim 1 and include all of the limitations thereof.

As per claim 42, proximal shoe 182 of Sellers does not teach or suggest a first L-shaped flange having a first vertical plate that receives the screw expansion mechanism and a first horizontal plate that is substantially perpendicular to the first vertical plate and that engages a first slot of the first transmitting structure, the first slot sized to receive the first horizontal plate. Similarly, distal shoe 220 of Sellers does not teach or suggest a second L-shaped flange having a second vertical plate connected to a distal end of the screw expansion mechanism and a second horizontal plate that is substantially perpendicular to the second vertical plate and that engages a second slot of the second transmitting structure, the second slot sized to receive the second horizontal plate.

Claims 43-47 are dependent upon claim 42 and include all of the limitations thereof.

As a result, Sellers does not teach each and every element recited in claims 1 and 42, as required to establish anticipation under 35 U.S.C. 102(a). The Final Office Action also failed to set forth any other rational reason why one of ordinary skill in the art would have made the modifications necessary to arrive at the claimed invention. Applicant therefore respectfully requests that the rejection of claims 1-17, 19-21, 24 and 42-47 under 35 U.S.C. 102(e) as being anticipated by Sellers be withdrawn.

#### **Claim Rejection Under 35 U.S.C. § 102 (Landsberger)**

In the Final Office Action, claims 1-21 and 24 were rejected under 35 U.S.C. 102(e) as being anticipated by Landsberger (US 6,113,599). Applicant respectfully traverses the rejection to the extent such rejection may be considered applicable to the amended claims. Landsberger fails to disclose each and every feature of the claimed invention, as required by 35 U.S.C. 102(e), and provides no teaching that would have suggested the desirability of modification to include such features.

Independent claim 1 has been amended as discussed above. The Final Office Action included a marked up FIG. 4B of Landsberger, stating that Landsberger teaches a first flange 405 that engages the first flange engagement structure and a second flange ("thread turn defines an

edge representing a second flange”) that engages the second flange engagement structure (see the Final Office Action at pages 4-5).

Applicant respectfully disagrees. As can be seen in FIG. 4B of Landsberger that was cited in the Final Office Action, Landsberger does not teach or suggest a first L-shaped flange and a second L-shaped flange as recited in amended independent claim 1. Namely, Landsberger does not teach a first L-shaped flange having a first vertical plate that receives the screw expansion mechanism and a first horizontal plate that is substantially perpendicular to the first vertical plate and that engages the first flange engagement structure of the first transmitting means, the first flange engagement structure sized to receive the first horizontal plate, as recited in claim 1. Landsberger also does not teach a second L-shaped flange having a second vertical plate connected to the distal end of the screw expansion mechanism and a second horizontal plate that is substantially perpendicular to the second vertical plate and that engages the second flange engagement structure of the second transmitting means, the second flange engagement structure sized to receive the second horizontal plate, as recited in claim 1. Claims 2-21 and 24 are dependent upon claim 1 and include all of the limitations thereof.

As a result, Landsberger does not teach each and every element recited in independent claim 1 as amended, as required to establish anticipation under 35 U.S.C. 102(a). The Final Office Action also failed to set forth any other rational reason why one of ordinary skill in the art would have made the modifications necessary to arrive at the claimed invention. Applicant therefore respectfully requests that the rejection of claims 1-21 and 24 under 35 U.S.C. 102(e) as being anticipated by Landsberger be withdrawn.

#### **Claim Rejection Under 35 U.S.C. § 103**

In the Final Office Action, the Examiner rejected claim 18 under 35 U.S.C. 103(a) as being unpatentable over Sellers (US 6,423,069) in view of Williams et al. (US 6,548,569). Applicant respectfully traverses the rejection to the extent such rejections may be considered applicable to the claims as amended. The applied references fail to disclose or suggest the inventions defined by Applicant’s claims, and provide no teaching that would have suggested the desirability of modification to arrive at the claimed invention. Furthermore, the Examiner has provided no other rational reason why one of ordinary skill in the art would have made the modifications necessary to arrive at the claimed invention.

Claim 18 is dependent upon claim 1, includes all the limitations thereof, and is therefore patentable for at least the same reasons. Withdrawal of the rejection of claim 18 under 35 U.S.C. 103(a) as being unpatentable over Sellers in view of Williams et al. is therefore respectfully requested.

### CONCLUSION

All claims in this application are in condition for allowance. Applicant respectfully requests reconsideration and prompt allowance of all pending claims. Please charge any additional fees or credit any overpayment to deposit account number 50-1778. The Examiner is invited to telephone the below-signed attorney to discuss this application.

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